



INTERNATIONAL HUMAN RIGHTS LAW ENFORCEMENT CHALLENGES IN 21ST
CENTURY AFRICA

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ABSTRACT

There have been many praises as well as criticisms against both the UN convention on the rights of the child and the African charter on the rights and welfare of the child. However, many writers are of the view that the African charter was an unnecessary duplication of the convention. This paper outlines some of the differences and similarities between the UN convention on the rights of the child, and the African children's charter. The paper traces the development of children's right treaties internationally and on the African continent, and argues that the adoption of the African children's charter is in tandem with the United Nation's call for regional arrangements for the protection and promotion of human rights, therefore not an unnecessary duplication of the UN convention.

Keywords: African Children Charter; Rights; Africa; Human Rights

1. INTRODUCTION

Human rights law is a general notion which embraces rights that are attributed to individuals, groups, peoples and mankind. These rights have at one time or the other been asserted and denied, exercised and waved, violated and respected and above all, extensively discussed, interpreted and disputed in numerous contemporary societies and within international communities. However, despite the institutional and normative innovations since the inception of the international human rights system, the international human rights system enters the 21st century facing a profound anomaly. The world today is still mired in widespread violations of human dignity. Internal and external conflicts in countries across the African region appear to grow not simply in frequency and magnitude, but also in complexity, intensity and viciousness. Also, in some democratic Africa countries, these human rights violations have assumed different forms of expression as peculiar to the particular nation's political, historical and economic background.

Africa region since 1970 has witnessed more than 30 wars and the consequences of these wars and conflicts have greatly undermined its efforts to achieve long-term stability, peace and prosperity for its people. However, despite the effects of human rights abuses to global and national security and development, Africa continent still remain stuck in widespread violations of human dignity due to ineffective and weak enforcement at various national levels. Because laws in themselves alone do not produce compliance without appropriate enforcement

and supervision, the term 'human rights' is now widely used internationally given that people have for long been struggling for dignity, freedom, social justice and equality.

2. DISCUSSION

2.1 *International Human Rights Law and Africa*

The emergence of human rights law in the international sphere remains one of the most significant developments since the end of the Second World War.¹ The growth and expansion of international human rights law, truly, has been so remarkable that it has acquired an important position in legal studies. Although there is no consensus definition of human rights, it is mostly agreed that human rights are those rights one has by virtue of being human.² With high concern over the observance of human rights which has witnessed the trial of many individual and corporate personalities, one can conclude that the world is not ready to have a repeat of the pre 1945 darkest days of human rights abuses. The term 'Human Rights' appeared in the public domain for the first time in the years 1942 to 1944 in the course of the internal policy discussions in the United States on the subject of the principles on which the post-war organization would be based.³ It is due to the atrocities of the Second War that human rights evolved and today, through the efforts of the United Nations, the universality of human rights is established and recognized in International law.⁴ These rights are generally presumed to be inalienable, universal, and inherent and must always be taken seriously.⁵ The human rights concept has its philosophical ancestry in the natural law school and may be seen as being synonymous with natural laws and natural rights.

Human rights are natural born rights for every human being and not privileges and everyone is entitled to it without discrimination of any kind. To this end, human rights are at the forefront today for leaders, businesses⁶ and workers in the global economy⁷ given that the idea of human rights is directed not only against the state, but also indirectly against other individuals.⁸ Yet, human rights of the individual are still widely violated, neglected or abused despite its recognition and acceptance under international law in the contemporary world. Following the adoption of the Universal Declaration of Human Rights in 1948, the international and regional human rights systems have been fundamental in the definition and protection of human rights. Both the international and regional have contributed substantially to the improvement of the rule of law in various different regions. Without the maintenance of the rule of law, violations of rights occur. Hence, where serious violations of the human rights occur, disrespect for the law grows and undermine the maintenance of public order. The international legal system is a system of sovereign and equal states⁹ and the Articles contained in the United Nations Charter are legally binding on Member States. However, the Charter failed to neither

¹ J. Rehman, *International Human Rights Law: A Practical Approach*. (Pearson Education Limited, England, 2003) pg 1

² MB Dembour, *Who believes in Human Rights?* (Cambridge university press, UK, 2006) pg 1

³ I. Bronlie, *Treaties and indigenous peoples: The Robb Lectures*. Brookfield, (Oxford: Clarendon Press, 1992) pg 35, cited in O.N. Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu CIOJAP Publishers, 1999) p 3

⁴ D. Ayton-Shenker, 'The challenge of Human rights and culture diversity' Available at <<http://www.un.org/rights/dpi1627e.htm>>

⁵ P. Villiers, *Human rights: A practical guide for managers* (Kogan page Limited, UK, 2001) pg 1

⁶ Companies have a responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others.

⁷ M. Haas, *International Human Rights: A comprehensive Introduction*. (Routledge , London, 2008) 1

⁸ D. Friedmann and D. Barak-Erez, *Human Rights in Private Law* (Hart Publishing, USA, 2001) 42

⁹ U. Natarajan, 'Creating and recreating Iraq: legacies of the mandate system in contemporary understandings of the third world sovereignty' (2011) L. J. I. L. 799 pg 5

specify what these human rights entail nor ways of its implementation in Member States until the 1948 adoption of the Universal Declaration of Human Rights (UDHR).¹⁰ Surprisingly, this declaration lacks the binding force of a treaty; hence, leaving its enforcement at the mercy of the member states. Member states and United Nations are duty bound to promote and encourage respect for human rights and fundamental freedom for all without any distinction.¹¹ This is a legal obligation accepted by every state without any exemption. In addition to the development of the substantive norms at the global level, procedures have been established to promote the implementation of these rights at numerous regional levels. Now, as then, it may prove practically impossible for some poor states to feed, clothe, educate or provide health care for its citizens, though, not disputing that it has a direct responsibility for those actions. Therefore, the clear inability of the human rights system to deliver effectively on its promises is not, in many ways, surprising.

Notwithstanding that many Africa nations were under colonial rule and were not duly represented in the drafting and signing stage of the United Nations Universal Declaration of Human Rights Charter, Independence restored the sovereignty of individual African States. Membership in the United Nations guaranteed their sovereign equality with other member states of the United Nations. The adoption of the Universal Declaration of Human Rights was followed by the creation of various regional instruments that address concerns of particular importance in the regional context.¹² Each regional system has originated from a shared interest and demand for establishing a framework for human rights enforcement and protection. For the African continent, such interest included safeguarding independence, collective security, territory integration and promoting solidarity.¹³

The first attempt by the Africa region to approach its numerous problems was pursued under the rubric of the Organization of Africa Unity (OAU).¹⁴ The Organization was concerned with two major concerns, firstly, the right to self-determination, and secondly, the protection of the fragile foundations of states that has just regained their independence. The OAU Charter largely ignored the concept of human rights in its early years of existence. Consequently, military dictatorship, single party states became the dominant forms of governance in the region with recorded gross human rights violations in the continent. As was further observed, human rights appeared to enjoy the low esteem during the 1970s, particularly in Africa.¹⁵ This view was predicated on the open passiveness maintained by the former OAU in condemning human rights violations in a number of independent African countries by 'unduly emphasizing the principle of non-interference in the internal affairs of the states'.¹⁶ There were upsurge of violence and gross violations of human rights due to constant conflict among states in pursuit of their sovereignty and independence. Though both UN and OAU during this period overlooked gross human rights violations of several despotic regimes around the world, yet, numerous treaties were concluded creating mechanisms to stop impunity during the same time.¹⁷

Over the years, the extent to which universal standards of human rights observance by the local cultural situation in the various regions of the world has been characterized in several

¹⁰ See the 'United Nations Universal Declaration of Human Rights', available at <<http://www.un.org/en/documents/udhr/>>

¹¹ Article 1 of the Charter of the United Nations

¹² J. Kim, 'Development of regional human rights regime: Prospects for and implications to Asia' Available at < http://www.sylff.org/wordpress/wp-content/uploads/2009/03/sylff_p57-1022.pdf>

¹³ *ibid.* pg 60

¹⁴ Established in 1963 by OAU Charter, adopted in 25th May, 1963. For a discussion on OAU see, 'The Organization for Africa Unity: An appraisal' (1989) *Zambia Law Journal* pp 1-29.

¹⁵ U. Umzurike, 'The Africa Charter on Human and Peoples' Right', (1983) 77 *American Journal of International Law*, pg 902

¹⁶ *Ibid.*, pg 902

¹⁷ Such treaties include the Convention against Torture; Convention on Elimination of all forms of Racial Discrimination 1965.

debates. The world has indeed seen the gradual evolution of regional human rights arrangements. In the Africa region, this argument is apparent in both the text and the formulation of the African Charter of Human and Peoples' Rights¹⁸. The African Charter draws its inspiration from the Universal Declaration of human Rights and other International human rights instruments as a unique human rights instrument. Today, Africa's participation can arguably be seen as a co-equal player in international legal norms. The African Charter remains an instrument married to the socio-cultural context of the greater African society in which it was given birth as reflected in its adoption of the term 'peoples'.¹⁹ The African Charter also made provision for the establishment of the enforcement mechanisms of the guaranteed rights through the African Commission on Human and peoples' Rights.

However, it has been constantly argued that the African Commission has been found wanting in its enforcement responsibility since its inception and as a result lost its status as the sole supervisory body in the region.²⁰ It has further been argued that the African human rights institutions, the recently established African Court of Human and Peoples' Rights²¹ and the African Commission on Human and Peoples' Rights, have not been known for their strong stance during times of highly charged political events that saw gross abuse of human rights in the continent.²² It is pertinent to note that though the Africa Charter is ratified by almost all member states of the Africa Union, human rights have continued to be relentlessly violated in the continent.²³ Today, African regional human rights system is seen as the least effective and developed when compared to its European and American counterparts.

Human rights provisions in various treaties can often be argued as ratified by various countries only in principle. This opinion is predicated on the view that human rights observance and implementation differs from one country to another. After-all, it is a system designed with significantly limited enforcement capacity. Hence, the reason for the gap between the guaranteed rights and extent to which rights are enjoyed in practice. Therefore, it is pertinent to state that lack of enforcement standard of the international human rights law remain the biggest impediment for the even actualization of the human rights across the globe. Consequently, enforcement with respect to the obligation to protect populations beyond borders from human rights atrocities remains seriously underdeveloped.²⁴ This relegates the opinion that to actualize an effective struggle to promote international human rights, there ought to be three aspects, namely, standard setting, information dissemination and implementation.²⁵ The establishment of the African Court of Human and Peoples' Rights was an applauded innovation given its normative and institutional frameworks and was believed to be a tool used to ensure accountability of human rights violators in the African region. However, some states in the African continent are not willing to enforce or lack adequate human rights infrastructure. An adequate human rights infrastructure exists when all of the following three are present, namely; legal norms establishing the parameters of human rights; government institutions monitoring,

¹⁸ Adopted 27 June 1981 by OAU Assembly of head of States and government and came into force October 1886

¹⁹ M. Komeja, 'The African System of Human and Peoples' Rights: An Annotated Bibliography. (1996) 3 East African journal of Peace and Human Rights, p 263

²⁰ J. Mubanzigi, 'Some reflections on recent and current trends in the promotion and protection of human rights in Africa: The pains and the gains', (2006) 6 African Human Rights Law Journal, pg 148

²¹ Established to complement the African Commission and was adopted in 1998, came into force in January 2004 while Judges were elected in January 2006.

²² R. Murray, 'The African court of human and peoples' rights order for provisional measures against Libya: greater promise for implementation of human rights in Africa' (2011) E. H. R. L. R. 464

²³ See the Sudan, Central Republic Africa civil wars; Rwanda's genocide, despotic and autocratic Mugabe rule in Zimbabwe, armed conflicts in Nigeria etc

²⁴ L. Glanville, 'The responsibility to protect beyond borders' (2012) H. R. L. Rev. 12 pg 13

²⁵ Michael Haas, *International Human Rights: A comprehensive Introduction*. (Routledge, London, 2008) 98

publicizing, implementing and enforcing human rights standards; and nongovernmental groups pressuring government to advance the cause of human rights.²⁶ Therefore, even the best strategies for human rights implementation will fail if suitable institutions do not exist to ensure even implementation to all who are entitled to it under the universal declaration.²⁷

Africa embraced the end of the second millennium as an opportune time to reposition the region on a firm path development, peace and human development.²⁸ It witnessed the introduction of new human rights institutions to ensure they are attuned to human rights challenges in the continent,²⁹ to respect the universality of human rights³⁰ despite its initial display of laxity to uphold the commitment to human rights promotion and protection. In contemporary Africa, human rights standards are embraced in line with the contemporary international standards of human rights as rooted in the United Nations Charter to promote universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Yet, whereas the universal system of human rights played a vital role in the enforcement of international human rights law, factors such as its wide geographical jurisdiction, inadequate resources to accommodate the increasing number of human rights violations and sovereignty undermined its efficacy. Now, as then, United Nations structures for human rights implementation may seem adequate; the problem lies with individual states' zeal to implement these human rights principles.³¹

2.2 Human Rights Enforcement in 21st Century

The international human rights system enters the 21st century with a profound anomaly despite the remarkable institutional and normative developments since its inception. Over the years, there has been a rise in neglect of, and standard of enforcement of the core principle of the international human rights value particularly in Africa.³² The cause for this enforcement gap suggests that traditional approaches to enforcement is inadequate to meet with the challenges of the 21st century.³³ The most significant rate of ratification of an international instrument is evident with the African Charter. Unfortunately, implementation and enforcement cannot be judged by ratification alone. Human rights enforcement takes place at two levels-national and international. However, the need for international (regional) enforcement became necessary because the states ignored or neglected to make adequate laws for the promotion and protection of human rights. Hence, international and regional enforcement mechanisms were developed as safety nets for enforcement.³⁴ However, upon ratification of either the international or regional

²⁶ Ibid, 99

²⁷ N. Pillay, 'Human Rights in United Nations action: Norms institutions and leadership' (2009) *European Human Rights Law Review* 1

²⁸ K. Kithure, 'The normative and institutional framework of the African union relation to the protection of human rights and the maintenance of international peace and security: A Critical Appraisal' (2003) 3 *Africa Human Rights Law Journal*, 99

²⁹ Such as, The African Court, The African Peer Review Mechanism (APRM), New Partnership for Africa Development (NEPAD), the restructuring of the old OAU to Africa Union (AU).

³⁰ see Article 60 of the Africa Charter on Human and Peoples Rights

³¹ R. Smith, 'The United Nations system of human rights and protection' (*Human Rights, peace and justice in Africa: A Reader*. Edited by, C.. Heyns and K. Stefiszyn. Pretoria University Law Press, 2006) pg 195

³² The Rwandan homicide, the atrocities of South Africa Apartheid regime, the ongoing Nigeria incessant human rights abuses by law enforcement agents and various armed groups, the Bosnia civil war 1992-1995, the Sudan conflict 2002- date, the violations and abuses of the Arab Spring of Egypt, Libya, and Syria.

³³ Such inadequacies and challenges include varieties of conceptual and institutional weaknesses, failure to develop a coherent overall structure with institutions, refusal to make distinctions amongst rights, etc.

³⁴ R. Smith, 'Human rights in the United Nations' (*Human Rights, peace and justice in Africa: A Reader*. Edited by C. Heyns and K. Stefiszyn. Pretoria University Law Press, 2006) 191

treaty on human rights, a legal obligation is expected of states without exemption to implement human rights standards.³⁵ It has been argued that the international human rights system's approach to enforcement and implementation has proven unrealistic in a world characterized by oppression, abuse of power and corruption, armed conflict and poverty.³⁶ Also, other factors such as sovereignty, inadequate resources to accommodate the increasing number of human rights violations, the issue of veto powers and the adverse effect of the cold war, were among the initial challenges of human right enforcement.³⁷

Human rights even though originated in the west and have a philosophical basis, there; its conceptions have universal validity and applicability in Africa as elsewhere. Regardless of the promulgation of the Africa Charter on Human and Peoples Rights, human rights system in Africa is seen as inadequate and ineffective when compared with other regions.³⁸ The OAU (now the Africa Union, AU) made prominent the importance of the socio economic rights believing that such rights are necessary to achieving development in the continent. Yet, these rights are made non-justiciable and unenforceable in most African states Constitution.³⁹ The AU is believed to be faced with many challenges with political, economic and social dimensions which require commitment and resources at the highest levels⁴⁰ for it to meet with its democracy and human rights objectives. Hence, for a region as diverse as Africa, suggesting an enforcement mechanism ought to take consideration of its diverse components.

The burden of enforcement does not start and end with the regional framework, rather with domestic enforcement institutions and the regional methods of promoting and ensuring such enforcement at the domestic level. Arguably, where suitable institutions do not exist to ensure and monitor implementation both at the domestic and regional level, even the best strategies would fail.⁴¹ In Mzizi view,⁴² the African Charter itself was an obstacle to the more effective realization of human rights in the continent which thus needs to be reviewed. The African Charter provides for adequate rights and responsibilities, but woefully deficient in enforcement mechanisms. It is worthy to mention that the worsening conditions of human rights in Africa have produced serious political, social and economic consequences. Therefore, reforms to existing institutions and alternative approaches to enforcement should be developed. Some important lessons, in this regard, can be drawn under the European system. Member states of the European Union are encouraged to incorporate the Convention⁴³ into their national law or may suffer pressure for violations of any provisions of the Convention. This, therefore, empowers the court at the national level to adjudicate matters relating to the provisions of the Convention and implement same while the European Court of human rights⁴⁴ acts as a

³⁵ Vienna Conference on Human Rights 1993, Available at

<[http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)> (Part 1, Para 27)

³⁶ D. L. Donoho, 'Human Rights Enforcement in the 21st Century', (2006) Bepress Legal Series, Paper 1282

³⁷ G. Mugwanya, *Human rights in Africa: Enhancing human rights through the African human rights regional system* 2003 pg 24-29

³⁸ J. Mubanzigi, 'Some reflections on recent and current trends in the promotion and protection of human rights in Africa: The pains and the gains', (2006) 6 African Human Rights Law Journal, pg 147

³⁹ See Constitution of the Federal Republic of Nigeria, Namibia.

⁴⁰ B. Gawanas 'The African Union: Concept and implementation mechanisms relating to human rights', available at >

http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/6_Gawanas.pdf<

⁴¹ N. Pillay, 'Human Rights in United Nations action: Norms institutions and leadership' (2009) European Human Rights Law Review 1

⁴² J. B. Mzizi, 'Human Rights, Peace and the African Charter on Human and Peoples' Rights' Africa (July –September 1998) Legal Aid Quarterly pg 37

⁴³ Convention for the Protection of Human Rights and Fundamental Freedoms (Known as European Convention on Human Rights) available at < http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf >

⁴⁴ Situated at Strasbourg, France

subsidiary to national courts. Yet, the region is assumed to lack comprehensive policy given that fundamental doubts persist on its competence in relation to the wide range of human rights issues arising from community policies.⁴⁵ The European Convention of Human Rights is seen as a product of realistic idealism anchored on the belief that democratic regimes' respect of fundamental rights are not pure domestic issues by implementing the UDHR through binding court decisions to which member must states abide.⁴⁶

The European Union⁴⁷ has as a major achievement the adoption of the European Convention on Human Rights⁴⁸ with a revolutionary enforcement approach whereby petitions which emanate from both the states and the individuals are adjudicated by an international court.⁴⁹ In view of the then problems created by the enforcement system in Europe, such as delay, reform was imperative and thus abolished the Commission and created a single permanent Court⁵⁰ with every member state presenting a judge.⁵¹ Thus, the European enforcement system can be seen as a future torchbearer and a de facto model for developing human rights enforcement mechanisms elsewhere irrespective of its few implementation challenges. Because human rights law is still evolving, its enforcement mechanisms should be in line with the contemporary needs of the society.⁵²

There is an apparent need to devise systems of accountability, particularly, of behaviour that may infringe upon human rights in Africa. Even as we witness the dynamic evolution of accountability mechanisms ranging from a structured form of economic pressure⁵³ to legal liability enforced by the domestic courts, new frontiers should be explored in theory and practice to crystallize a working framework for human rights enforcement in Africa. The transformation of the OAU to AU was a positive step towards strengthening human rights in Africa. The Constitutive Act⁵⁴ of the AU makes provision for a number of organs and institutions to ensure that human rights is promoted and protected in the region. Significantly, the Constitutive Act⁵⁵ of the AU in its bid to promote and protect human rights in the region also provided for a right of humanitarian intervention in member states by the Union, where cases of grave human rights violations are anticipated. Unfortunately, this medium is rarely used in the region. However, in the African Commission on Human and Peoples' Rights v Great Socialist People's Libyan Arab Jamahiriya⁵⁶, wherein articles⁵⁷ of the African Charter were alleged to have been violated during the Arab Spring and the violent suppression of the uprising in Libya by both forces loyal to Colonel Gaddafi and the rebels, the Court ordered

⁴⁵ P. Alston and H. Weiler, 'An 'ever closer union' in need of a human rights policy: The European union and human rights' in Philip Alston (eds.) *The EU and Human Rights* (Oxford University Press, New York, 1999) 6

⁴⁶ L. Wildhaber, 'Rethinking the European Court of Human Rights' in [Jonas Christoffersen and Mikael Madsen, *The European court of human rights between law and politics*. (Oxford University Press, New York, 2011)] 205

⁴⁷ Set up in 1949 to ensure peace and security in the region.

⁴⁸ Signed in 1950 and came into force in 1953

⁴⁹ MB Dembour, *Who believes in Human Rights?* (Cambridge university press, UK, 2006) pg 22

⁵⁰ European Court of Human Rights Came into force in 1998

⁵¹ MB Dembour, Op Cit pg 24-25

⁵² From the African region such challenges like repression in opposition groups and parties, unlawful killings, torture, armed conflicts and child trafficking and labour, child soldier, sexual violence, discrimination against disabled persons. See Human rights Watch, available at <<http://www.hrw.org/africa>>. From European region we have intolerance to minority and migrants, counterterrorism attack and the rise of populist extremist parties. See Human Rights Watch, available at <<http://www.hrw.org/world-report-2012/europe-s-own-human-rights-crisis>>

⁵³ Such economic as consumer boycotts

⁵⁴ The Constitutive Act of the AU article 5 (a) - (i)

⁵⁵ Article 3, paragraph of AU Constitutive Act, available at <http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf> accessed 19/06/2012

⁵⁶ Unreported March 25, 2011 (Central African Republic)

⁵⁷ Articles 1,2,4,5,9,11,12,13 and 23 of the African Charter of Human and Peoples' Rights

provisional measures against the Respondent to immediately refrain from any action that is in breach of the provisions of the Charter or of other International human rights instruments to which it is a party. Enforcement of such court orders and judgements is till date another flaw of the regional instruments. No doubt, the most important but difficult task in such situation lies in enforcement at the national level, which requires a legal system that protects human rights just as the region creates safety nets for those issues and cases not effectively dealt with at the national level. It can now be deduced that the period of conceptual battle is over, and focus now must be shifted to implementation of the treaties on human rights in AU member states.

Africa Charter is a distinctive instrument married to the socio-cultural context in which it was given birth.⁵⁸ However, ratification of treaties in itself does not mean enforcement. The success or failure of any international human rights system should be evaluated in accordance with its impact on human rights practice on the country level. Consequently, there is a wide acceptance that the security and development of Africa, and the world at large will be based on human rights; therefore, without practical encouragement of the principles of democracy and human rights, the objectives of the AU may struggle with challenges such as, military coup d'états⁵⁹, wars⁶⁰, armed religious and ethnic violence⁶¹, poverty, and hunger⁶². With adequate literature focusing on general modern international human rights law⁶³ and contemporary human rights development,⁶⁴ the majority of which elaborates the fundamental rights and freedoms to which one is entitled.⁶⁵ The challenges hearing is to ensure that the promises contained in the treaties and affirmed through ratification are realized in the lives of the people around the world.

3. CONCLUSION

One of the challenges of human rights is that it demands new ways of thinking. Today, the enforcement of basic human rights remains one of the most pressing and yet most elusive goals of the international community⁶⁶ and particularly of African region. The universal system of human rights established under the United Nations played a vital role in the enforcement of international human rights law immediately after its inception in 1945; however, its wide geographical jurisdiction undermined its efficacy.⁶⁷ Africa's contention that its region was largely un-represented at the time of drafting and adoption of the human rights laws/standards⁶⁸ also contributed to the efforts towards an effective enforcement and realization of human rights law by necessitating regional human rights systems. Yet, enforcement of international human rights law provisions and standards are not at its best. Africa's enforcement challenges also includes an array of institutional and conceptual weaknesses such as, lack of policies that would

⁵⁸ J. Oloka-Onyango, 'Human rights and sustainable development in contemporary Africa: A new dawn, or retreating horizon?' Available at <http://hdr.undp.org/en/reports/global/hdr2000/papers/joseph%20oloka-onyango1.pdf>

⁵⁹ Mali, 2012

⁶⁰ Joseph Oloka-Onyango, Op Cit. (Since 1970 more than 30 wars have been fought in Africa)

⁶¹ Book Haram Islamic military group in Nigeria (2009 till date)

⁶² East and sub-saharan African countries of Somalia, Ethiopia and Kenya

⁶³ R. Smith, *International Human Rights*, (4th Edition, Oxford University Press, New York, 2010) pg 1

⁶⁴ H. J. Steiner and P. Alston, *International Human Rights in Context, Law, Politics, Morals* (2nd Edition, Clarendon Press, Oxford, 2000) p. 2

⁶⁵ R. Smith, *Text and materials on International Human Rights* (Rutledge-Cavendish, New York, 2007) pg v

⁶⁶ E. Hafner-Burton and K. Tsutsui, 'Human rights in a globalizing world: The paradox of empty promises' Available at

https://umdrive.memphis.edu/rblanton/public/POLS_7508_Fall_2009/hafner_paradox.pdf

⁶⁷ During this period, the United Nations was the sole enforcer of human rights globally and therefore making it practically impossible to effectively enforce all concerns of human rights violations.

⁶⁸ M. Mutua, 'The ideology of human rights' (1996) 36 *Virginia Journal of International Law*, pg 605.

ensure a more realistic voluntary state compliance, and, the absence of an effective structure or institutions to encourage observance of such international conventions. Rachel Murray opined that the African regional court has not been visible in human rights enforcement as same is hampered by the failure of most states parties to the Protocol to permit individuals and NGOs direct access to the court.⁶⁹

However, Courts can play two roles in the enforcement and promotion of human rights in Africa. Firstly, through the law-making functions of interpreting legislation and developing the rules of law, and secondly, by delivering judgment in constitutional and other cases that are intended to advance those rights. Therefore, the institutional framework provided by the Africa Charter to promote and ensure enforcement and compliance could either be seen as inadequate and underused.

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⁶⁹ R. Murray, 'The African court of human and peoples' rights order for provisional measures against Libya: greater promise for implementation of human rights in Africa' (2011) E. H. R. L. R. 464 pg 7

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